

REMARKS

Applicants have considered the outstanding official action. It is respectfully submitted that the claims are directed to patentable subject matter as set forth below and are now in condition for allowance.

Claims 8-14, 16, 18-20, 25 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants appreciate the Examiner's statement of allowance of these claims if rewritten in independent form. However, applicants have amended rejected independent claims 1 and 24, from which these claims depend, to overcome the rejection thereof. As such, claims 8-14, 16, 18-20, 25 and 27 have not been rewritten in independent form at this time. Withdrawal of the objection of the above claims is respectfully requested. Accordingly, claims 8-14, 16, 18-20, 25 and 27 are in condition for allowance.

The pending rejections are as follows:

- (1) Claims 1, 17, 21, 24 and 29 under 35 U.S.C. § 102(b) over Japanese Patent No. JP02001113283A (JP '113283);
- (2) Claims 2, 23 and 28 under 35 U.S.C. § 103(a) over JP '113283 in view of U.S. Patent No.

5,320,751 (Burns);

- (3) Claims 3-7 under 35 U.S.C. § 103(a) over JP '113283 in view of Japanese Publication No. JP2002102859A (JP '102859); and
- (4) Claims 15, 22 and 26 under 35 U.S.C. § 103(a) over JP '113283.

Applicants have amended the claims to more precisely define applicants' invention. For the reasons set forth hereafter, applicants respectfully traverse the rejections.

Claims 1, 17, 21, 24 and 29 are rejected under 35 U.S.C. § 102(b) over JP '113283. Claims 1 and 24 are the independent claims. Claim 1 claims a device to magnetically treat wine. The device comprises two semi-cylindrical halves, each semi-cylindrical half having a fastening end and a grasping end, wherein the grasping end extends from the fastening end and is constructed and arranged for opening and closing the fastening end of the device. A spring mechanism connects the semi-cylindrical halves. A plurality of magnets, each of the magnets having a north pole and a south pole, are arranged in the semi-cylindrical halves. The device is constructed and arranged to provide the wine with a modified taste than before treatment thereof.

Claim 24 claims a device to magnetically treat wine. The device comprises two halves, each half having a fastening end and a grasping end, wherein the grasping end extends from the fastening end and is constructed and arranged for opening and closing the fastening end of the device. A spring mechanism connects the halves. A plurality of magnets, each of the magnets having a north pole and a south pole, are arranged in the halves. The device is constructed and arranged to provide the wine with a modified taste than before treatment thereof.

JP '113283 discloses a clip type magnetic water activating element. The clip 1 has grasping parts 2 and magnets 3 which are provided in the grasping parts 2. The clip 1 can be opened and closed by holding the knob parts 4 of the clip 1. The clip activates the water of a waterworks when the grasping parts 2 of the clip are fitted around a water pipe or crock. JP '113283 does not disclose a device to magnetically treat wine wherein the device is constructed and arranged to provide the wine with a modified taste than before treatment thereof as claimed. Particularly, the terms appearing in the preamble, e.g., wine, are deemed limitations of a claim when they "give meaning to the claims and properly define the invention." See In re Paulsen, 30 F.3d 1475, 1479, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

6024/USSN 10/621,563
Group Art Unit 1761

Thus, the term "wine" gives meaning to the claims and properly defines the claimed invention. Accordingly, JP '113283 does not disclose each and every element of the claimed inventions in claims 1, 17, 21, 24 and 29 and thus does not anticipate these claimed inventions under 35 U.S.C. § 102(b). Withdrawal of the § 102 rejection of claims 1, 17, 21, 24 and 29 is respectfully requested.

JP '113283 is also applied in combination with Burns to reject dependent claims 2, 23 and 28 under 35 U.S.C. § 103(a). Burns is relied on for teaching the additional limitations of claims 2, 23 and 28. Burns, however, does not make up for the shortcomings of JP '113283 as set forth above. JP '113283 does not suggest any motivation to modify the teachings of JP '113283 or Burns in order to provide the claimed invention. Accordingly, JP '113283 in combination with Burns does not render the claimed invention obvious under 35 U.S.C. § 103(a). Withdrawal of the § 103 rejection is respectfully requested.

JP '113283 is also applied in combination with JP '102859 to reject dependent claims 3-7 under 35 U.S.C. § 103(a). JP '102859 is relied on for teaching the additional limitations of claims 3-7. JP '102859, however, does not make up for the shortcomings of JP '113283 as set forth above. JP '113283 does not suggest any motivation to modify

6024/USSN 10/621,563
Group Art Unit 1761

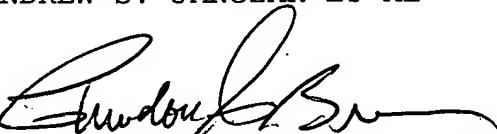
the teachings of JP '113283 or JP '102859 in order to provide the claimed invention. Accordingly, JP '113283 in combination with JP '102859 does not render the claimed invention obvious under 35 U.S.C. § 103(a). Withdrawal of the § 103 rejection is respectfully requested.

JP '113283 is also applied under 35 U.S.C. § 103(a) to reject dependent claims 15, 22 and 26. JP '113283 has shortcomings as set forth above and does not suggest any motivation to modify the teachings thereof in order to provide the claimed invention. Accordingly, JP '113283 does not render the claimed invention obvious under 35 U.S.C. § 103(a). Withdrawal of the § 103 rejection is respectfully requested.

Reconsideration and allowance of the claims are respectfully urged.

Respectfully submitted,

ANDREW S. JANCZAK ET AL

By 
Theodore A. Breiner, Attorney
Registration No. 32,103
BREINER & BREINER, L.L.C.
P.O. Box 19290
Alexandria, Virginia 22320-0290

Telephone: (703) 684-6885